



May 29, 2001

Ms. Ann-Marie P. Sheely  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2001-2184

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147744.

The Travis County Sheriff's Office (the "sheriff's office") received a request for all incidents involving two named individuals that occurred at a given address between 1993 and 1995. You state that you have released one incident report to the requestor. You claim, however, that the remaining responsive information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information consists of completed investigations, and normally must be released pursuant to section 552.022(a)(1) of the Government Code. Section 552.022 makes "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" public information unless expressly made confidential under other law or "except as provided by [s]ection 552.108[.]" Gov't Code § 552.022(a)(1).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Judicial decisions hold that information is protected by common law privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates

the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See Open Records Decision Nos. 616 (1993), 565 (1990)*. Therefore, where a request seeks a compilation of an individual's law enforcement records, those records which indicate that the individual was arrested or was a suspect are protected by the common law right of privacy.

You argue that the request "essentially seeks all [sheriff's office] records relating to" the two named individuals. We agree that the request seeks a compilation of these individuals' law enforcement records and thereby implicates their common law right of privacy. Therefore, pursuant to section 552.101 of the Government Code in conjunction with the common law right of privacy, the sheriff's office must withhold any incident reports that list either named individual as a suspect.

You claim that the information in Exhibit C consists of juvenile records that are excepted from disclosure under section 552.101 of the Government Code. Section 552.101 of the Government Code encompasses confidentiality statutes such as section 51.14 of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. *See Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591*. Most of the incident reports submitted as Exhibit C concern juvenile conduct that occurred prior to January 1, 1996, and are therefore confidential under former section 51.14(d) of the Family Code. However, report number 9400012744 does not concern juvenile conduct. Thus, with the exception of report number 9400012744, the incident reports submitted as Exhibit C must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 51.14(d) of the Family Code.

You contend that the information in Exhibit D concerns incidents of abuse of a child and must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Section 261.201 of the Family Code reads in part as follows:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because the documents in Exhibit D relate to allegations of child abuse, the documents are within the scope of section 261.201 of the Family Code. Moreover, we note that report number 9500002571, which is included under Exhibit A, also relates to allegations of child abuse. You have not cited any specific rule that the investigating agency has adopted with regard to the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the information in Exhibit D and report number 9500002571 are confidential pursuant to section 261.201 of the Family Code and must not be released to the requestor. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).<sup>1</sup>

You also assert that the information in Exhibits A through D is excepted from disclosure under sections 552.108 of the Government Code. As we have already concluded that most of the information in Exhibits B and C, all of Exhibit D, and report number 9500002571 must be withheld from disclosure, we need only address whether the remaining information (i.e., the remaining information in Exhibits A and B, and report number 9400012744) may be withheld from disclosure under section 552.108. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that the remaining information pertains to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to the remaining information.

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<sup>1</sup>We note that if these investigations have been referred to the Department of Protective and Regulatory Services (the "DPRS"), a parent who is a requestor may be entitled to access to the DPRS's records. Section 261.201(g) of the Family Code provides that the department, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, the sheriff's office may withhold the remaining incident reports from disclosure based on section 552.108(a)(2). We note that the sheriff's office has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

Ordinarily, section 552.108(c) does not except from disclosure the identity of a crime victim or complainant as this is basic front page offense and arrest information. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976). But in this instance, you seek to withhold the alleged crime victims' identities and statements. You contend that the disclosure of this information may subject the victims "to intimidation and/or harassment." You argue that the victims' identities and statements are protected from disclosure under section 552.101 of the Government Code in conjunction with common law privacy.

We first note that victim and witness statements are not basic front page offense and arrest information and may therefore be withheld under section 552.108(a)(2), as provided above. As to the victims' names, we advise that, as a general rule, common law privacy does not protect the identity of a crime victim. *See* Open Records Decision No. 438 at 7 (1986) (stating that identity of a complainant, which generally is public information, may be withheld only in unique circumstances). Such information may be withheld under section 552.101 in conjunction with common law privacy only upon a showing of certain "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers such "special circumstances" to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.*

We have considered your position. However, we do not believe that you have established the presence of special circumstances sufficient to justify the withholding of the alleged crime victims' identities under section 552.101 and common law privacy. Therefore, as to those incident reports that this decision concludes may be withheld under section 552.108, the sheriff's office must disclose the victims' identities in releasing basic front page offense and arrest information.

To summarize, we conclude that: (1) pursuant to section 552.101 of the Government Code in conjunction with the common law right of privacy, the sheriff's office must withhold in their entirety any incident reports that list either named individual as a suspect; (2) with the exception of report number 9400012744, the incident reports submitted as Exhibit C must be withheld from disclosure in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 51.14(d) of the Family Code; (3) the information in Exhibit D and report number 9500002571 are confidential in their entirety pursuant to section 261.201 of the Family Code and must not be released to the requestor; and (4) with the exception of the basic front page offense and arrest information, which includes victims' identities, and which must be released, the sheriff's office may withhold the remaining incident reports from disclosure based on section 552.108(a)(2). We have marked the information that must be withheld under section 552.101.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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<sup>2</sup>As a result of these conclusions, we need not address your other claimed exception.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 147744

Enc: Marked documents

c: Mr. Albert C. Lirette  
5500 Rosehill, No. D  
Austin, Texas 78745  
(w/o enclosures)